IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS NOS. 5608, 5612, 5613, 5644, AND 5944 ALL OF 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DASARATHBHAI V PATEL

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners

MR KUKESH R. SHAH AND ASIM PANDYA for Respondents

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision:11/10/2001

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. In all these Petitions the issue raised is regarding the interpretation of the provisions of Kar Vivad Samadhan Scheme (Removal of Difficulties) Order 1998. All the petitioners are partners/directors of various Firms engaged in the manufacture of excisable goods. Common show cause notices were issued to the manufacturers, i.e, the Firms as also the partners/directors. The show cause notices were issued prior to 31-03-1998 and quantified amounts of dues were

demanded from the Firms. Notices for imposing penalty on the Firms as also the partners/directors were issued. Orders of adjudication were passed confirming demands of duty against the Firms and also penalties on the partners/directors. The partners and directors had preferred Appeals before the Appellate Authority and were pending when the Kar Vivad Samadhan Scheme (KVS Scheme) was brought into operation on 01-09-1998. The amounts of penalties were not paid and the petitioners filed declarations as individuals under the KVS Scheme by paying 50% of the penalty amount for settlement of remaining 50% of tax arrears of penalties.

#. On 08-12-1998, the Central Government issued Kar Vivad Samadhan Scheme (Removal of Difficulties) Order 1998 with retrospective effect from 01-09-1998, i.e. the date on which the original KVS Scheme was brought into force. Under the Removal of Difficulties Order, the benefits of the Scheme were extended along with the main noticees also to the co-noticees against whom show cause notices had been issued. It was provided that on payment of 50% of the tax arrears by the main noticees, the proceedings pending against the co-noticees should also stand settled.

#. The case of the petitioners in this batch of Petitions is that the amount of penalties were imposed and were quantified. They had all preferred Appeals. The matters were not at the show cause notice stage. In a similar situation a Division Bench of this Court to which one of us, namely, D.M. Dharmadhikari, C.J. is a party, in Special Civil Application No. 4326 of 1999 and other cognate matters (Omkar S. Kanwar v. Union of India) by its judgment dated 14-11-2000 held that on correct interpretation of the order of removal of difficulties 1998, the co-noticees on whom, pursuant to the show cause notices, penalties have been imposed by an adjudication order and they are in Appeal, the benefit of KVS Scheme cannot be extended and cases against them cannot be settled merely on payment of 50% of tax arrears by the main noticees.

#. In our opinion, the point raised by the petitioners in these cases is squarely covered by the decision of the Division Bench of this Court in the case of Omkar S. Kanwar (supra) decided on 14-11-2000 whereby similar legal contentions advanced as in these cases were repelled and it was held that co-noticees have to separately pay 50% of arrears to take benefit of the KVS Scheme and on payment of 50% of tax arrears by the main noticees, the cases of co-noticees cannot be settled by

waiving all deposits of tax arrears.

#. Learned counsel Shri Paresh Dave appearing for the petitioners in his brief oral submission and a detailed written submissions has stated that the legal issues involved on the interpretation of KVS Scheme and the Order of Removal of Difficulties 1998 issued thereunder require reconsideration, more so when another Division Bench of this Court (Coram : R.K. Abichandani and D.H. Vaghela JJ) in the case of Star Pistons Private Limited and another v. Union of India and others 2000 (38) RLT 797 (Guj.) has interpreted the KVS Scheme and the Removal of Difficulties Order to hold that the benefit of KVS Scheme is not available to co-noticees even at the show cause notice stage. Learned counsel for the petitioner submits that as there is thus a conflict in the two Division Bench decisions of this Court rendered in the case of Omkar S. Kanwar (supra) and Star Pistons Private Limited (supra) this Court should refer the matter to a Larger Bench for resolving the controversy.

#. In our considered opinion, these are not the proper cases where any reference to Larger Bench is required to be made. The petitioners are co-noticees against whom orders of adjudication were passed pursuant to show cause notices for imposing penalty and they are in Appeals. They cannot get the benefit of KVS Scheme only on payment of 50% of tax arrears by the main-noticees. None of the two decisions of the Division Bench mentioned above is of any assistance to the petitioners.

Since the point raised by the petitioners as discussed above is squarely covered by the decisions of this Court, all these Petitions must fail and are hereby dismissed, but in the circumstances with no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(RAVI R. TRIPATHI, J)

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